

MEMORANDUM OF LAW

DATE: April 23, 1992
NAME: Councilmember Tom Behr

FROM: City Attorney
SUBJECT: Payment of Certain City Funds to Poway For Reimbursement of
Certain 8A Construction Costs; Legality of

BACKGROUND

You have requested our views concerning the legality of a payment of certain city funds to Poway for reimbursement of 8A construction costs as they may relate to a proposal to be considered by the City Council on April 27. This proposal would authorize an amendment to an existing Memorandum of Understanding between the cities of San Diego, Poway and the Poway Redevelopment Agency to, among other things, require Poway to assign these rights to reimbursement to The City of San Diego as partial consideration for additional requirements to be assumed by San Diego. You asked for a written opinion from us concerning the legality of the original obligation to reimburse Poway. Our response follows.

ANALYSIS

Attached as Exhibit 1 to this Memorandum of Law is a chronology of events regarding 8A. Of particular significance is the Memorandum of Understanding between the parties dated December 11, 1990, Section 1 which provides as follows:

1. SAN DIEGO agrees to reimburse POWAY, if possible, for its costs incurred in the construction of the third and fourth lanes of Alternate 8A by making such good faith efforts as are necessary and appropriate to cause the formation, if feasible, of any or all of the following: a) a cost reimbursement district for the affected properties; b) a facilities benefit assessment district for the affected area, including other benefitted properties; c) such other reimbursement district or device as will accomplish reimbursement within a reasonable period of time. ¶Emphasis added¶

As you can see from the chronology, at the time the Memorandum of Understanding was negotiated and ratified (December 11, 1990), the precise nature and extent of developer contributions from McMillin-BCED

had not been completely determined. In authoring the section alluded to above, this writer suggested the use of the phrase "such other . . . device as will accomplish reimbursement" to provide the maximum flexibility in negotiating developer contributions from McMillin-BCED.

When the development agreement was ratified by City Council action on January 22, 1991, Section 6.1.7 of the agreement called for a \$2.1 million contribution for 8A (Scripps Ranch North Parkway) and Pomerado Road off-site construction (\$1,050,000 for each). It is our view that, taken as a whole, this was the "device" which the City used to meet the obligation arising from Section 1 of the Memorandum of Understanding and that when McMillin-BCED paid those amounts to the City, the City then became obligated to "reimburse" Poway for its construction costs to that extent.

JOHN W. WITT, City Attorney

By

Curtis M. Fitzpatrick

Assistant City Attorney

CMF:rlc:js:Lit.

Attachment

ML-92-39